

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY 11 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

|                       |   |                            |
|-----------------------|---|----------------------------|
| THE STATE OF ARIZONA, | ) | 2 CA-CR 2009-0410-PR       |
|                       | ) | DEPARTMENT A               |
| Respondent,           | ) |                            |
|                       | ) | <u>MEMORANDUM DECISION</u> |
| v.                    | ) | Not for Publication        |
|                       | ) | Rule 111, Rules of         |
| MARK LYLE BARRICKLOW, | ) | the Supreme Court          |
|                       | ) |                            |
| Petitioner.           | ) |                            |
| _____                 | ) |                            |

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-44299

Honorable Richard Nichols, Judge

REVIEW GRANTED; RELIEF DENIED

Mark Barricklow

Florence  
In Propria Persona

E S P I N O S A, Presiding Judge.

¶1 Following a jury trial in 1994, petitioner Mark Barricklow was convicted of aggravated assault with a deadly weapon, a class three felony, possession of a deadly weapon, a class four felony, and unlawful possession of a dangerous drug, also a class four felony. The trial court found Barricklow had two historical prior felony convictions

and imposed concurrent terms of imprisonment, the longest of which was fifteen years, followed by a consecutive term of community supervision “for such length of time . . . as his parole officer may determine.” *See* A.R.S. § 13-603(I).<sup>1</sup>

¶2 After Barricklow appealed the convictions, he moved to dismiss the appeal and we granted the motion in December 1996. In February 1997, he filed a notice of post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., which the trial court dismissed a little over a month later. In November 2009, Barricklow filed what he called a petition for post-conviction relief, which the trial court presumably regarded as a notice of post-conviction relief. *See* Rule 32.4(a). He filed a memorandum a few weeks later in which he argued that the prohibition against double jeopardy was violated when his release on community supervision was revoked and he was again incarcerated. The trial court summarily dismissed the petition, finding Barricklow’s “claim to be meritless and that no purpose would be served by further proceedings.” This petition for review followed. “We will not disturb a trial court’s ruling on a petition for post-conviction relief absent a clear abuse of discretion.” *State v. Swoopes*, 216 Ariz. 390, ¶ 4, 166 P.3d 945, 948 (App. 2007). We find no abuse here.

¶3 In light of the scant record before us, we will assume the accuracy of the following facts as set forth in the pro se Rule 32 memorandum Barricklow filed in the

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<sup>1</sup>The relevant portion of §13-603(I) in effect at the time Barricklow was convicted and sentenced in 1994 provided: “The term of community supervision shall be served consecutively to the actual period of imprisonment.” *See* 1993 Ariz. Sess. Laws, ch. 255, § 6. That version of the statute did not require, as the current version does, that the defendant “sign[] and agree[] to abide by conditions of supervision,” in order to make community supervision consecutive to the actual prison term. *See* 1995 Ariz. Sess. Laws, ch. 199, § 2.

trial court and in his petition for review. Thirteen days after Barricklow was released from prison on October 21, 2008, he violated the conditions of his two-year term of community supervision. The Board of Executive Clemency revoked his community supervision and returned him to custody for the balance of his two-year community supervision term. Barricklow argues that “reincarcerat[ing]” him for a “technical violation” of his community supervision after he had served his actual prison terms violates his constitutional protection against double jeopardy.

¶4 “The Double Jeopardy Clauses of the United States and Arizona Constitutions protect criminal defendants from multiple convictions and punishments for the same offense.” *State v. Ortega*, 220 Ariz. 320, ¶ 9, 206 P.3d 769, 772 (App. 2008); *see also* U.S. Const. amend. V; Ariz. Const. art. II, § 10. However, “[c]ommunity supervision is simply a part of the sentence that has to be served in the community after completion of a period of imprisonment . . . .” *State v. Cowles*, 207 Ariz. 8, ¶ 14, 82 P.3d 369, 372 (App. 2004); *State v. Jenkins*, 193 Ariz. 115, ¶ 18, 970 P.2d 947, 952 (App. 1998); *see* A.R.S. § 13-105(5) (“‘Community supervision’ means that portion of a felony sentence that is imposed by the court pursuant to § 13-603, subsection I and that is served in the community after completing a period of imprisonment . . . .”); Ariz. R. Crim. P. 26.1(b) (“The term sentence means the pronouncement by the court of the penalty imposed upon the defendant after a judgment of guilty”). Because the community supervision term was part of Barricklow’s sentence, subsequently requiring him to serve the remainder of that term in custody does not constitute an additional punishment and thus no double jeopardy violation occurred.

¶5 Barricklow also argues for the first time on review that the outcome here would have been different had he been eligible for earned release credits. *See* A.R.S. § 41-1604.07.<sup>2</sup> But we will not consider on review any issue the trial court has not had an opportunity to rule on first. *State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980).

¶6 Although we grant the petition for review, we deny relief.

/s/ Philip G. Espinosa

PHILIP G. ESPINOSA, Presiding Judge

CONCURRING:

/s/ Joseph W. Howard

JOSEPH W. HOWARD, Chief Judge

/s/ Virginia C. Kelly

VIRGINIA C. KELLY, Judge

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<sup>2</sup>Although Barricklow refers to A.R.S. § 41-1601.07, it appears he meant to refer to § 41-1604.07 instead.